

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Marshall Johnson  
LeRoy Koppendrayer  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of an Investigation Regarding  
Qwest's Compliance with Section 271 of the  
Telecommunications Act of 1996 with Respect  
to the Provision of InterLATA Services  
Originating in Minnesota

ISSUE DATE: September 11, 2001

DOCKET NO. P-421/CI-96-1114

NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On October 31, 1996, this Commission issued its ORDER INITIATING PROCEEDING, opening this docket to develop the record it will need to discharge its responsibilities under Section 271(d)(2)(B) of the Telecommunications Act of 1996<sup>1</sup>, i.e. to provide guidance to the FCC in its decision to grant or deny Qwest's request to provide interLATA service within Minnesota. Specifically, the FCC will ask the Commission to verify whether Qwest has opened its local markets in Minnesota to competition in compliance with the requirements of Section 271 (c).<sup>2</sup>

On February 2, 1998, the Commission issued its ORDER GRANTING INTERVENTION PETITION, ESTABLISHING PROCEDURAL FRAMEWORK, AND REQUIRING FILINGS.

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<sup>1</sup> Pub.L.No. 104-104, 110 Stat. 56, codified in various sections of Title 47, United States Code.

<sup>2</sup> Under Section 271 of the Telecommunications Act of 1996 (the Act), state commissions are required to provide guidance to the FCC in its decision to grant or deny a Regional Bell Operating Company's (RBOC's) request to provide interLATA service within a given state. Specifically, Section 271(d)(2)(B) provides:

Before making any determination under this subsection, the Commission [FCC] shall consult with the State Commission of any state that is the subject of the application in order to verify compliance of the Bell operating company with the requirements of subsection (c).

This Order established the procedural framework that would be used to develop the record for the Commission's recommendation to the FCC on Qwest's compliance with Section 271 (c).<sup>3</sup>

On February 8, 2000, U S WEST Communications, Inc. (USWC), submitted an *Application and Notice Concerning Section 271 Process*. In this *Application*, USWC asked the Commission to assess USWC's satisfaction of Section 271 through a series of formal industry workshops.

On June 13, 2000, the Commission issued its ORDER DENYING USWC'S PROPOSED REVISED PROCEDURE AND DIRECTING FURTHER FILINGS. In rejecting USWC's proposal, the Commission reasoned that the Company's proposal potentially eroded more efficiencies than it would increase and threatened to diminish the quality of the resulting record, all at an unreasonable increased burden to the participating government parties and CLECs. Instead, the Commission directed Qwest and the parties to meet to develop a new process for this matter and to attempt to file a joint proposal. The Commission stated that if the parties could not agree to a process to replace the process in the February 1998 Order, Qwest could file a revised procedure that addressed the six concerns outlined by the Commission in its Order.

On July 1, 2001, Qwest informed the Commission that there was no agreement on a revised 271 process and stated its intent to proceed under the Commission's current procedural Order from February 1998.

On August 10, 2001, the Commission issued a Notice announcing its intent to meet with the parties to discuss appropriate procedures for handling a Qwest Section 271 filing for Minnesota.

On August 17, 2001, Qwest filed a proposed procedural schedule for processing its 271 filing, based on filing its notice of intent to file with the Commission in the Fourth Quarter of 2001 and its 271 filing with the FCC in the First Quarter 2001.<sup>4</sup> Qwest proposed to file its Statement of

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<sup>3</sup> The February 1998 Order directs Qwest to file with the Minnesota Commission 90 days prior to filing with the FCC. The filing would include the information requested in the Commission's Order and Qwest's initial testimony. The Commission would notify all competitive local exchange carriers (CLECs) of Qwest's filing and request the information listed in the Commission's Order. Written testimony by all parties other than Qwest would be due on day 45. Discovery would end day 54. Evidentiary hearings would be conducted by the Commission on days 55-57. Initial briefs would be due on day 65, and replies on day 70. Staff would complete a report summarizing the hearings on day 90. The Commission would meet on day 95 and hear oral argument. By day 110, December 31, 2001, an Order would be issued. (Day 110 would coincide with the 20th day after Qwest filed with the FCC, which is the date state commission comments are due at the FCC.)

<sup>4</sup> At the August 30 hearing, Qwest stated that by December 31, 2001 it will have given the Commission notice of intent to file with the FCC on March 31, 2002 and that it will make its FCC filing by the announced date: March 31, 2001.

General Available Terms (SGAT) on October 1, 2001, to begin to file monthly performance results October 1, and to file the Qwest Performance Assurance Plan (QPAP or anti-backsliding plan) on November 3, 2001.

On August 28, 2001, the Commission received two additional filings in this proceeding. First, the CLEC Coalition filed comments largely addressing the role of an SGAT in a Qwest 271 proceeding. Second, the Department, the RUD-OAG, AT&T, and Worldcom jointly commented on Qwest's August 17 filing and filed a procedural proposal for a Qwest 271 filing.

The Commission met on August 30, 2001 to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **I. BACKGROUND**

Section 271 of the Telecommunications Act of 1996 (the Act) provides for Regional Bell Operating Companies (RBOCs) to enter interLATA long distance markets. Such entry, however, cannot take place within an RBOC's current local service region until the RBOC has filed for entry with the FCC and the FCC has found the RBOC satisfies the conditions set forth in section 271 of the Act for opening its local markets to competition.

When Qwest files a petition with the FCC seeking authority to enter interLATA long distance markets in one of the states in Qwest's 14 state operating area, the FCC must consult with the State commission for that state regarding Qwest's petition for entry. However, the FCC is only required to allow state commissions 20 days in which to comment after the FCC filing is made. Obviously, if no preliminary proceedings have been concluded prior to the FCC filing, the Commission will be in no position to make recommendations within such a 20 day period. Therefore, the Commission has taken several steps to prepare itself to provide that consultation. In its October 31, 1996 Order establishing a procedural framework in this matter, the Commission stated:

. . . a State commission cannot develop an adequate record and provide effective consultation to the FCC if the RBOC does not file with the State commission well before it files with the FCC. [footnote omitted] NARUC [the National Association of Regulatory Utility Commissioners] recommends RBOCs file all their evidence for interLATA entry under § 271 of the Act with State commissions at least 90 days before they file with the FCC. The Commission agrees with NARUC and urges US West to file its petition for interLATA entry with the Commission as far in advance of its filing with the FCC as possible.

US West's filing with the Commission should provide the evidence the Company expects to rely on to demonstrate compliance with all the requirements of § 271, . . .

Order at page 5.

In its February 2, 1998 ORDER GRANTING INTERVENTION PETITION, ESTABLISHING PROCEDURAL FRAMEWORK, AND REQUIRING FILINGS, the Commission stated:

The original [October 31, 1996] Order made it clear that the Company should file its notice of intent to seek interLATA authority at least 90 days before filing with the FCC. Even this time frame, however, will place the Commission and all parties under serious time constraints. The Commission will therefore establish a procedural framework now for the remainder of the proceeding, subject to modification should circumstances change.

Order at page 3.

This Order established the procedural framework that would be used to develop the record for the Commission's recommendation to the FCC under 47 U.S.C. § 271 (d)(3). The Order reiterated the 90 day notice to the Commission requirement and included fifty-six information requests that USWC was to respond to when it filed its notice of intent.

In its August 17, 2001 filing, Qwest announced its plan to file with the Commission its notice of intent to file its 271 petition with the FCC by the end of the Fourth Quarter of 2001 (December 31, 2001) and to file its 271 petition with the FCC by the end of the First Quarter of 2002 (March 31, 2002).

## **II. JURISDICTION**

The Commission has responsibility under Section 271(d)(2)(B) of the Telecommunications Act of 1996 to advise the FCC whether to grant or deny Qwest's request to provide interLATA service within Minnesota. Specifically, the Commission must verify whether Qwest has opened its local markets in Minnesota to competition in compliance with the requirements of Section 271 (c).

## **III. REFERRAL FOR CONTESTED CASE PROCEEDINGS**

The Commission finds that a thorough and orderly development of certain factual matters will be required to place it in a position to discharge its responsibility under Section 271 to advise the FCC on whether Qwest has opened its local markets in Minnesota to competition in compliance with the requirements of Section 271 (c) of that Act.<sup>5</sup> The Commission, therefore, will refer the matter to the Office of Administrative Hearings for contested case proceedings.

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<sup>5</sup> The FCC has defined the state commission's primary goal as development of "a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition. . . ." Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, Memorandum Opinion and Order, CC Docket No. 97-137. Memorandum Opinion and Order, ¶30 (rel. Aug. 19, 1997). The FCC promises to "consider carefully state determinations of fact that are supported by a detailed and extensive record." Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, ?FCC 98-271, ¶9 (rel. Oct. 13, 1998).

#### **IV. ISSUES TO BE ADDRESSED**

The Commission seeks a thorough and orderly record, as well as a Report from the Office of Administrative Hearings making proposed findings and recommendations on issues relevant to Qwest's compliance with Section 271 of the Telecommunications Act of 1996 except Qwest's Performance Assurance (Anti-Backsliding) Plan (QPAP). Subjects covered would include

1. taking into consideration the final report from the Regional Oversight Committee 13-state collaborative Operational Support Systems test (ROC OSS test) where applicable, the status of Qwest's provision of each checklist item listed in Section 271(C)(2)(B);
2. Qwest's compliance with Section 272 (separate affiliates);
3. Qwest's provision of emerging services as it relates to 271 compliance;
4. public interest evaluation;
5. analysis of Qwest's SGAT where necessary and recommendation of language for any contested SGAT provision; and
6. review of unbundled network elements (UNE) prices, including determination of costing numbers for the items (elements) not currently included in interconnection agreements via a TELRIC cost proceeding.

#### **V. EXPEDITED TREATMENT**

##### **A. Time Constraints**

The Commission has established an aggressive schedule for its own review and decision regarding Qwest's 271 compliance, aiming to reach a decision by May 1, 2002. Based on the need for the Office of Administrative Hearing's work product in reaching that goal, the Commission respectfully requests proposed findings and recommendations on these issues no later than April 1, 2002.

Parties should note the time frames at the outset and be prepared for the expedited hearing schedule that time frame requires.

Given the time pressures upon the Commission created by the relatively short timeframe for Commission response to the FCC's request for consultation and the need to conduct a sound evaluation based on the best possible record, the Office of Administrative Hearings (OAH) may choose to assign as many Administrative Law Judges (ALJs) to the matter as it views consistent with being able to compile the necessary record and report to the Commission on these issues by April 1, 2002.

For example, the OAH may find it efficient and appropriate to treat item # 6, Qwest's UNE prices, as a separate subject to be handled by a separate ALJ, with his or her findings and recommendations developed separately but submitted to the Commission on or before April 1, 2001 as part of the ALJ Report. Likewise, the OAH may find it appropriate to conduct the Section 272 separate affiliates requirement (item #2) separately.

## **B. Filings Required**

In light of the time constraints faced by all parties, the Commission will require the initial filings described below.

### **1. Records From Other States**

The parties will be directed to deliver to the Commission relevant records from all the other Qwest state Section 271-related proceedings, not just from the multi-state proceeding. Along with each state's records, the parties should identify any separate agreements they have made that address check-list items and or SGAT items. In deciding what to file, the parties should bear in mind that the Commission is interested in any information that will lead to the thorough and efficient processing of a Minnesota-specific filing.

### **2. Compliance With the Checklist Items<sup>6</sup>**

Qwest will be required to file testimony on Checklist items 3,7,8,9,10, and 12 plus section 272 (separate affiliates) by September 30, 2001.<sup>7</sup>

Filing dates for testimony on the remaining checklist items (Checklist items 1,2,4,5,6,11,13, and 14, emerging services, and the public interest) will be as directed by the ALJ.

Scheduling hearings on all the checklist items is also left to the sound discretion of the relevant ALJ (s).

### **3. Statement of Generally Applicable Terms (SGAT) as Allowed by Section 252(f) of the Act**

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<sup>6</sup> The "Checklist" that an RBOC must satisfy is enumerated in Section 271(C)(2)(B) of the Act.

<sup>7</sup> These checklist items depend very little on the ROC OSS Test results, but to the extent they do, conclusions about them could be made dependent on test results, which are not currently due until November 27, 2001. In a pre-hearing Order, the ALJ may wish to require that this report be filed as part of the contested case proceeding as soon as it becomes available.

Qwest has indicated an intent to file an SGAT, pursuant to Section 252(f) of the Act. The Commission will require Qwest to file its SGAT or a “model interconnection agreement” by October 1, 2001. The Commission clarifies that it will be conducting a separate proceeding (separate docket) on the merits of the SGAT itself and that what the Commission needs from the ALJ at this time (by April 1, 2002) is a report on how Qwest's SGAT specifically treats items not currently included in interconnection agreements and, in the event of disputed language, how the SGAT *should* treat such items.

#### **4. Qwest's Performance Assurance (Anti-Backsliding) Plan (QPAP)**

Qwest's Performance Assurance (Anti-Backsliding) Plan (QPAP) is related to the Commission's 271 compliance review, but the Commission currently has an open proceeding on Qwest's wholesale service quality (Docket No. P-421/M-00-849) and would like to consider Qwest's QPAP in the context of that proceeding. The Commission, therefore, will develop this issue itself and not refer this matter for contested case treatment. To coordinate these two matters, the Commission will direct Qwest to file its QPAP with the Commission by November 3, 2001.

### **VI. PROCEDURAL OUTLINE**

#### **A. Administrative Law Judges**

The Office of Administrative has assigned two Administrative Law Judges (ALJs) to this case: Richard C. Luis and Steve Mihalchick. ALJ Luis' address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401-2138; (612) 349-2542. ALJ Mihalchick's address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401-2138; (612) 349-2544.

#### **B. Hearing Procedure**

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, (651) 297-3000 or are available online at [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

Under these rules, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Karen Hammel, Assistant Attorney General, 700 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101, (651) 297-1852 or Ray Smith, Telecommunications Analyst, 121 7th Place East, Suite 350, St. Paul, Mn 55101-2147, (651) 296-1334 or Diane Wells, Telecommunications Analyst, 121 7th Place East, Suite 350, St. Paul, Mn 55101-2147, (651) 296-6068.

The times, dates, and places of the evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

### **C. Parties and Intervention**

Current parties to this proceeding are Qwest, the Minnesota Department of Commerce (the Department), the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), the Telecommunications Resellers Association (February 2, 1998 Order), the CLEC Consortium (Ace Telephone, HomeTown Solutions, LLC, Hutchinson Telecommunications, Inc., Mainstreet Communications, LLC, NorthStar Access, Onvoy Communications, Otter Tail Telecom, LLC, Paul Bunyan Rural Telephone Cooperative, Tekstar Communications, Inc., U.S. Link, Inc., Val-Ed Joint Venture, LLP, and WETEC LLC), Covad, Global Crossing, and New Edge Network (June 13, 2000 Order), and Eschelon.

Other persons wishing to become formal parties to this proceeding shall promptly file petitions to intervene with the Administrative Law Judges. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

### **D. Prehearing Conference**

A prehearing conference will be held in this matter on Thursday, September 20, 2001, at 1:30 P.M. in the Large Hearing Room at the Commission offices, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include discovery procedures, treatment of non-public information, and similar issues.

#### **E. Time Constraints**

The Commission has established an aggressive schedule for its own review and decision regarding Qwest's 271 compliance, aiming to reach a decision by May 1, 2002. Based on the need for the Office of Administrative Hearing's work product in reaching that goal, the Commission urgently requests proposed findings and recommendations on these issues no later than April 1, 2002.

Parties should note the time frames at the outset and be prepared for the expedited hearing schedule that timeframe requires.

#### **F. Report in Segments Option**

A final consideration: if the Commission receives the entire ALJ Report on April 1, 2002, the time for objections before the Commission's May 1 decision will be substantially compressed. The Commission notes, however, that some issues referred for contested case treatment may be suitable for ALJ findings and recommendations earlier than others. If it would not compromise the overall effort, the ALJ may consider issuing the Report in segments, i.e. forwarding to the Commission segments as soon as they are completed, thus allowing for the parties' customary objections and reply comments and thereby further developing the record for the Commission.

#### **G. Application of Lobbying Provisions**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, may apply to this proceeding. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

### **ORDER**

1. A contested case proceeding shall be held on all issues relevant to Qwest's compliance with Section 271 of the Telecommunications Act of 1996. Subjects covered will include
  - a. the status of Qwest's provision of each checklist item listed in Section 271(C)(2)(B);
  - b. Qwest's compliance with Section 272 (separate affiliates);
  - c. Qwest's provision of emerging services as it relates to 271 compliance;
  - d. public interest evaluation;

- e. analysis of Qwest's SGAT and recommendation of language for any contested SGAT provision; and
- f.. review of UNE prices, including the determination of costing numbers for the items (elements) not currently included in interconnection agreements via a TELRIC cost proceeding.

An ALJ's Report (findings and recommendations) on these subjects is requested by April 1, 2002.

- 2. The contested case proceeding shall begin with a prehearing conference on Thursday, September 20, 2001, at 1:30 P.M. in the Large Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.
- 3. The parties shall promptly deliver to the Commission records from all relevant state proceedings (Qwest state Section 271-related proceeding), not just from the multi-state proceeding. Along with each state's records, the parties shall identify any separate agreements they have made that address check-list items and or SGAT items.
- 4. By September 30, 2001, Qwest shall file testimony on Checklist items 3,7,8,9,10, and 12 plus section 272 (separate affiliates). The hearing schedule on these items will be set by the ALJ.
- 5. Qwest shall file testimony on Checklist items 1,2,4,5,6,11,13, and 14, emerging services, and the public interest on a date determined by the ALJ. The hearing schedule on these items will also be set by the ALJs.
- 6. By October 1, 2001, Qwest shall file with the Commission a Statement of Generally Available Terms (SGAT or a "model interconnection agreement"). In the portion/segment of its Report devoted to Qwest's SGAT, the ALJs are requested to report on how Qwest's SGAT specifically treats (and how it should treat) items not currently included in interconnection agreements and should also include TELRIC-based analysis and costing numbers for those elements.
- 7. By November 3, 2001, Qwest shall file with the Commission testimony on Performance Assurance Plan/QPAP. This issue is *not* referred to the Office of Administrative Hearings for contested case treatment.
- 8. All parties to this proceeding may serve information requests on any other party. Information requests shall be answered within ten days of receipt.

9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
Suite 1700  
100 Washington Square  
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
Suite 350  
121 Seventh Place East  
St. Paul, Minnesota 55101-2147

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Respect to the Provision of InterLATA  
Services Originating in Minnesota

MPUC Docket No.

OAH Docket No. P-421/CI-96-1114

NOTICE OF APPEARANCE

Name, Address, and Telephone Number of Administrative Law Judges:

Richard C. Luis, Office of Administrative Hearings, Suite 1700, 100 Washington Square,  
Minneapolis, Minnesota 55401-2138; (612) 349-2542. Steve Mihalchick, Office of  
Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138;  
(612) 349-2544.

TO THE ADMINISTRATIVE LAW JUDGES:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_

DATE: \_\_\_\_\_